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Attorney for: Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP, its assignees and/or successors

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

1        Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP fka  
2 Countrywide Home Loans Servicing LP, its assignees and/or successors, ("Bank of America") in  
3 the above-entitled Bankruptcy proceeding, hereby submits the following Objections to  
4 Confirmation of the Chapter 13 Plan proposed by ("Debtors") Etta Jean Penn-Bailey and Joe  
5 Murl Bailey.

6        1.      Bank of America services and is entitled to receive payments pursuant to a  
7 Promissory Note which matures on 4/1/2033 and is secured by a Deed of Trust on the subject  
8 property commonly known as 2571 San Leandro Boulevard, San Leandro, CA 94578. As of  
9 7/22/2011, the approximated amount in default was \$2,868.42, incurred with respect to the  
10 default.

11        2.      The proposed Plan does not set forth a reasonable schedule and time period for  
12 the payment of the arrearages owed to Bank of America. The payoff period and monthly  
13 repayment amount proposed by the Debtors exceeds a reasonable arrangement in light of  
14 Debtors' past non-payment history. Debtors allege in the Plan that the arrears owed to Bank of  
15 America are in the amount of \$0.00, while in fact the actual arrears owed are in the amount of  
16 approximately \$2,868.42. Objecting Creditor anticipates filing a Proof of Claim shortly that will  
17 reflect this. To cure the pre-petition arrearages of \$2,868.42 over the term of the Plan within 36  
18 months, Bank of America must receive a minimum payment of \$79.68 per month from the  
19 Debtors through the Plan. Debtors' Plan provides for payments to the Trustee in the amount of  
20 \$2,180.00 per month for 36 months. Debtors do not have sufficient funds available to cure the  
21 arrears over the term of the Plan within 36 months. Clearly, the Plan is not feasible. A true and  
22 correct copy of Debtors' Schedules I and J is attached hereto as **Exhibit "1"**.

23        3.      Unless otherwise ordered, under 11 U.S.C. § 1326(a)(1), the Debtors shall  
24 commence making the payments proposed by the Plan within 30 days after the Petition is filed.  
25 The Plan must comply with all applicable provisions of 11 U.S.C. § 1325 to be confirmed. As  
26 such, the Plan cannot be confirmed.

27        4.      The Debtor's plan proposes to pay unsecured creditors ahead of the secured claim  
28 of the objecting Creditor. Such a proposal is not allowed and Bank of America objects to such a  
29 plan. Accordingly, the plan should not be confirmed.

## CONCLUSION

Any Chapter 13 Plan proposed by the Debtors must provide for and eliminate the Objections specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy Code. Bank of America respectfully requests that confirmation of the Chapter 13 Plan as proposed by the Debtors be denied, or in the alternative, be amended to provide for full payoff of the arrearages owed to Bank of America.

WHEREFORE, Bank of America prays as follows:

1. That confirmation of the Proposed Chapter 13 Plan be denied, or in the alternative, be amended to provide for full payoff of the arrearages owed to Bank of America within 36 months;

2. For attorneys' fees and costs herein,

3. For such other relief as this Court deems proper.

Respectfully submitted,

McCarthy & Holthus, LLP

8/31/2011

By: /s/ Joseph Chun, Esq.  
Joseph Chun, Esq.  
Attorney for Bank of America, N.A., as  
successor by merger to BAC Home  
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Home Loans Servicing LP